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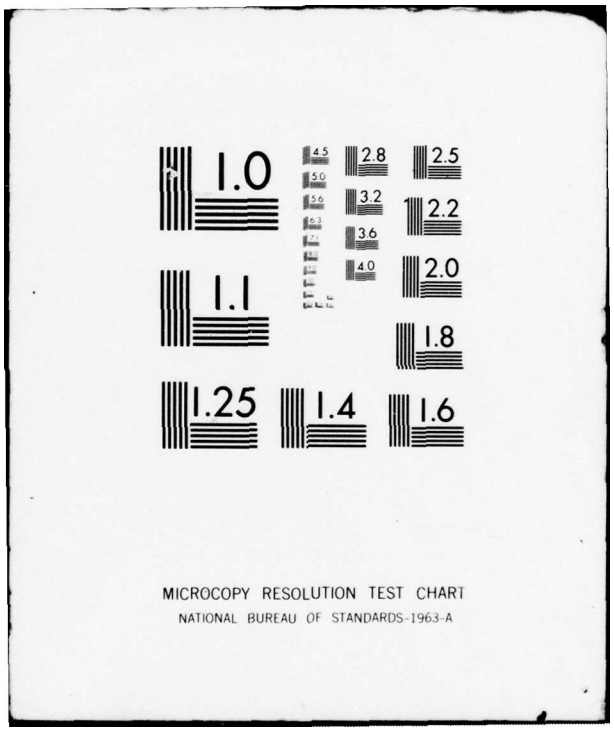
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UNITED STATES NAVAL WAR COLLEGE

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RESEARCH PAPER

THE BREADTH OF THE TERRITORIAL SEA —
A COMMON UNITED STATES AND SOVIET UNION POSITION

by

Stanley L. Primmer

Lieutenant Commander, U.S. Navy

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This study surveys the recent developments in the breadth of the territorial sea and analyzes positions of the United States and Soviet Union. Past international conferences, although describing the different regimes of the sea, have failed to settle the highly important question of the breadth of the territorial sea. National jurisdiction over belts of waters, 12 miles or greater, is now claimed by 63 coastal nations. The expansive trend of claims during the last 12 years is viewed with a degree of urgency to conclude an international agreement in a new Law of the Sea Conference in 1973. The two major

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THE BREADTH OF THE TERRITORIAL SEA — A COMMON UNITED STATES AND SOVIET UNION POSITION (U)

by

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A Thesis submitted to the Faculty of the Naval War College and The School of Public and International Affairs of the George Washington University in partial satisfaction of the requirements for the degree of Master of Science in International Affairs.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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Abstract of

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A COMMON UNITED STATES AND SOVIET UNION POSITION

This study surveys the recent developments in the breadth of the territorial sea and analyzes positions of the United States and Soviet Union. Past international conferences, although describing the different regimes of the sea, have failed to settle the highly important question of the breadth of the territorial sea. National jurisdiction over belts of waters, 12 miles or greater, is now claimed by 63 coastal nations. The expansive trend of claims during the last 12 years is viewed with a degree of urgency to conclude an international agreement in a *new Law of the Sea Conference* in 1973. The two major opponents in the last International Conferences, the United States and Soviet Union, reveal a convergence of interests in many areas and could be drawn together in leading the nations in codification of the twelve-mile territorial sea limit. Satisfactory tradeoffs in establishing an international regime for control of the resources of the oceans beyond the territorial waters could then be concluded simultaneously or in the very near future.

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THE BREADTH OF THE TERRITORIAL SEA — A COMMON UNITED STATES AND SOVIET UNION POSITION

CHAPTER I

INTRODUCTION

The sea is being looked upon with increasing covetousness by nations which margin on it and they are laying claim to exercise exclusive authority over large areas of it. Over one hundred nations border on the oceans or accessible seas, many of these newly independent during this past decade. The extremes are represented by countries with less than five miles of coast and by the Soviet Union with a monumental 23,098 miles of coastline, most of which is frozen and barren. The United States has 12,383 miles of coastline, slightly over half that of the Soviet Union. Nearly all of it is accessible and eminently useable, however, and this constitutes one reason why the United States has ranked as the world's dominant maritime power. As such, the United States has had, and now will doubtlessly share with the challenging maritime power, the Soviet Union, a vital interest in the accessibility of the world's oceans and will view with alarm any attempts by anyone to lessen this accessibility.

In recent years various states have found it desirable or necessary to extend national jurisdiction into what have been called contiguous zones. Such claims have been asserted mainly for the purpose of conserving fishery resources and restricting fishing rights in these areas to local fishermen. In most instances these zones have been limited to

waters lying between the three and twelve mile lines. Some states have claimed sovereignty as far out as 200 miles from their shores and insisted that foreign fishermen obtain explicit authorization from local port officals to operate in these waters.

The trend for nations to claim larger marginal belts is reflected in the fact that, now, more nations adhere to the twelve mile limit than to the older three mile. Many states have given credit to this movement for some time through the insistence on the right to enforce their custom and revenue laws within four leagues of their coasts.

Divisions still exist among states not only on the extent and nature of national jurisdiction, but also over the activities that may be performed within territorial waters and contiguous zones. In the hope of resolving differences between countries plans have been made to convene a new Law of the Sea Conference in 1973 to try to reach further agreement regarding territorial waters and contiguous zones. It is the intention of this paper to study current claims to territorial seas, and specifically review the positions and motives of the United States and the Soviet Union. An attempt will be made to determine the greatest possible latitudes acceptable to these two superpowers and to identify future trends and problems. Recent years have revealed a convergence of interests in many areas by these two nations; therefore, prospects are excellent that an agreement of a twelve-mile territorial sea limit can be reached. If the major powers can reach an agreement on this crucial issue in the Law of the Sea, the other nations will follow and together they can continue to develop the remainder of the ocean's resources.

CHAPTER II

THE TERRITORIAL SEA: CLAIMS TO DIFFERENT LIMITS

Historical Origins. One of the great unsettled issues concerning maritime law today is the problem of the width of the territorial sea. Many theories have been put forth to rationalize different widths for territorial sea claims. These range from ancient territorial sea claims extending offshore "a stone's throw" to the March 1970 claim of Brazil to a 200-mile territorial sea.[1] Included in any historical summary would certainly be the familiar "cannon shot rule" as well as other theories.

U.S. Three Mile Claim. Whatever its historical origins, there is no doubt that the three-mile limit for territorial seas began its ascendancy in the late eighteenth century. Notable in the early development of the three-mile territorial sea limit was the initial cautious adherence to that limit by the United States. Secretary of State Jefferson, in writing to the British Minister in 1793, identified the United States claim" . . . for the present . . . (as) three . . . miles from the seashores."[2] The three-mile line for the territorial sea developed into a widely recognized limit in the following 130 years, due in large part to its being consistently championed by the United States and Great Britain. Indeed, as Professor Jessup observed at the end of the first quarter of the twentieth century: "Upon a consideration of all the evidence, therefore, the present writer is of the opinion that the three-mile limit is an established rule of international law."[3]

U.S.S.R. Twelve Mile Claim. The three mile position, nonetheless,

had opposition, and although many nations' positions could be reviewed, the twelve mile Russian claim is the basis of this study. This great power had pursued a volatile policy during most of the nineteenth century and by 1898 the Czar was urged to extend the Russian waters to keep up with the increasing range of cannon.[4] The first step in the twelve-mile claim was taken by means of the customs law of December 10, 1909 and was followed by a bill in 1911 to reserve exclusive fishing rights to the same range.[5] Both steps drew immediate protests from the British government but the Russians were progressing toward a permanent policy, a twelve-mile limit. The Russian intentions were realized on June 15, 1927, in the form of a Soviet decree proclaiming twelve miles to be the limit of their territorial seas.[6] Thus, Russia formally gave up the cannon-shot rule and established her claim that is still effective to present day.

The Hague Conference. Prior to World War II, three miles was still the limit acknowledged by a majority of nations. However, the question of maximum permissible breadth and the rights of coastal states to establish such limits was becoming a matter of international debate. An indication of the erosion of unanimity was the failure of the Hague Convention of 1930 to reach agreement on the maximum breadth of territorial waters.[7] This international law codification convention clearly brought into focus growing international questions as to the three-mile limit of territorial waters.[8]

Certain pronouncements were made by neutral nations immediately prior to the outbreak of World War II which were designed to exclude

hostile acts by belligerents within wide high seas areas off their coasts.[9] In addition, the United States after entry into the war declared several extensive Maritime Control Areas around strategic portions of the United States continental coast, the Panama Canal, and off Alaska.[10] The significance of these extraordinary wartime acts for the international status of the three-mile territorial sea limit is open to question, particularly since the Maritime Control Areas were discontinued by the United States in 1945 and 1946.[11]

Effect of Truman Proclamation. One unilateral act by the United States following the Second World War impacted dramatically on the general law of the sea and the stability of the breadth of the territorial sea in particular. This was the so-called Truman Proclamation of 1945 on the continental shelf.[12]

An examination of specific language of the Truman Proclamation shows that its drafters intended it to be a highly specialized and limited jurisdictional claim.[13] The proclamation extends United States jurisdiction and control only to: " . . . the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States . . .".[14] The proclamation was not intended as a general extension of territorial sovereignty since it provided that: "The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected."[15] Any intent to extend the United States territorial sea was specifically negated in the Department of State press release which accompanied the proclamation.[16]

We can note that no protests were made by other governments to the proclamation immediately. However, an adverse impact on continued acceptance of the three-mile limit for the territorial sea did not result from other nations imitating the United States action exactly.[17] Rather, the United States proclamation served as a catalyst for extensive offshore claims which made little or no effort to restrict the scope of the sovereign right claimed. In June of 1947 Chile promulgated a Presidential Declaration which extended "Protection and control . . . over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles from Chilean territory."[18] Within the next five years three more Latin American nations joined the "200-mile club." Such claims seem to extend exclusive control over offshore fisheries. The Argentine government stated that it found it necessary to extend the limit of its territorial waters from three to 200 miles because of the greatly increased presence of Soviet fishing vessels off its coasts.[19] The language used in the various decrees was not precise. Often it utilized terms which left unclear the exact extent of control being asserted. However, insofar as these decrees attempted to declare jurisdiction in some fashion over the superjacent water column, such claims exceeded the limited continental shelf claim of the Truman Proclamation.

New Concepts Emerging. By 1952 a broader juridical basis for such claims began to crystallize. At the First Tripartite Conference, Chile, Ecuador, and Peru formulated the Declaration of Santiago on the Maritime

Zone which contained the following statement of maritime policy: "The Governments of Chile, Ecuador, and Peru therefore proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast."[20]

Primary proponents of the 200-mile claims now assert that these concepts have evolved from maritime policy into basic principles of the law of the sea. A concentrated effort is presently being made by its advocates to encourage wider acceptance of this position. In the Declaration of Montevideo on the Law of the Sea of 1970, the signatory states declared as a basic principle of the law of the sea that coastal states have: "The right to delimit their maritime sovereignty and jurisdiction in conformity with their own geographic and geological characteristics and consonant with factors that condition the existence of marine resources and the need for national exploitation."[21]

Similar language is contained in the declaration produced by the Lima Conference on the Law of the Sea held in August of 1970.[22]

It is difficult to envision any logical outer limit of coastal state competence in claiming offshore jurisdiction under these broad principles. Assuming that the specifically enumerated criteria have some inherent maximum limitation, the " . . . need for national exploitation" is an open ended subjective test.

During its early development, the idea of total coastal state competence to declare the limits of national offshore jurisdiction was

taken seriously by only a handful of Latin American nations. However, the concept that the coastal state has unlimited power to make such claims is an easily understood theory which appears to accommodate most national goals and policies.[23] The proponents of this doctrine are now actively seeking to promote its acceptance among many of the developing nations of the world. To 1971, this inherently dangerous theory of unilateral coastal state competence had not managed to gain substantial adherents anywhere other than in Latin America.[24] Little comfort can be taken from this fact nor does it allow those concerned with achieving harmony and equity in the law of the sea the luxury of adopting a wait and see attitude. Two recent events preclude taking this stance. The 200-mile territorial sea decree of Brazil in March 1970 has been noted. This action by the largest and potentially most powerful nation on the South American continent places great pressure on other moderate Latin American states to adhere to the 200-mile concept, or at least to abstain from taking a contrary international position.

A second event of possibly greater significance was the passage of legislation on law of the sea by Canada in 1970. This legislation claimed a twelve-mile territorial sea, recited competence to establish a 100-mile "pollution control zone" in the waters surrounding all Canadian lands, including islands, above 60 degrees north latitude, and authorized the drawing of extensive "fisheries closing lines" primarily in the Gulf of St. Lawrence and the Bay of Fundy.[25] This assertion of offshore competence is not limited to exclude control over superjacent waters as was the Truman Proclamation. It asserts the right of Canada

to unilaterally regulate many high seas activities - including navigation. This is the first such claim by a nation in modern times.[26]

The Canadian Government has stated with regard to the pollution control legislation that it is based on " . . . the overriding right of self defense of coastal states to protect themselves against grave threats to their environment."[27] Prime Minister Trudeau further stated that " . . . there is no international . . . law applying to the Arctic seas . . . we are prepared to help it develop by taking steps on our own. . . . we just want to make sure that the development is compatible with our interests . . ."[28] This stated legal rationale for the Canadian action reminds one of the early Latin American justification for the 200-mile jurisdictional claims.

Implications of Recent Claims. These recent claims make it easy to visualize the restrictions on maritime and air traffic under conditions of extended territorial seas. Agreements for continued international use for shipping may not necessarily be made applicable to air traffic. It will be recalled that the right of innocent passage through territorial waters does not apply to aircraft. Extensions of territorial sovereignty over water will vastly complicate these problems should waterways which were formerly international become nationalized.

Flexibility in the freedom of movement through straits and archipelagoes may be challenged whenever it suits the nation claiming jurisdiction and control.[29] Expansion of the territorial sea merely to the limit of twelve miles alone could have the effects of wholly inclosing the following passages and straits:[30]

1. Strait of Dover
2. Strait of Gibraltar
3. Strait of Normus (Southern entrance to Persian Gulf)
4. Southern entrance to the Red Sea
5. All passages through the Indonesian Archipelago
6. Passage between Sardinia and Corsica
7. Entrance to the Gulf of Finland
8. Gulf of Bothnia
9. Most of the Aegean Sea

The leading seafaring nations, including the United States and the Soviet Union, are viewing with grave concern and noting with dismay this trend toward even larger claims.[31]

Faced with these ever increasing unilateral coastal claims, the need for affirmative action is apparent. International agreement on the territorial sea breadth is the logical starting point for such efforts. It might appear, at this point, that United States - Soviet Union agreement might provide the key which turns the lock in the international impasse over this question.

CHAPTER III

PAST INTERNATIONAL CONFERENCES

The diversity of national views at the 1930 Hague Convention was so great that no action was taken toward adopting a uniform rule for the breadth of the territorial sea, although a majority of the 47 attendant nations seem to have favored a three-mile concept.[1] The failure of this first modern international convention gave indication that the three-mile limit might not be the answer to the question of the territorial sea width.[2] As a result many countries began an expansion and modification of territorial sea claims, with the situation leading toward confusion by the time the United Nations, following the turmoil of World War II, was to create a new body to study this and other important issues of international law.

International Law Commission. The International Law Commission commenced its study of the territorial sea in 1947 and made its final draft report to the General Assembly in 1956.[3] The preparatory work of the Commission must not be underestimated although an attitude of uncertainity was predominant during the discussions on the width of the territorial sea according to some scholars.[4]

Some writers have criticized the work of the commission as too vague or lacking imagination, still the commission did conclude a text that conveyed the majority and minority views with some attempt to balance the equities. Article 3 of the final draft provided:

Breadth of the territorial sea

1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.

2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.

3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes on the one hand, that many States have fixed a breadth greater than three miles, and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.

4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference.[5]

The Geneva Conference (1958). The United Nations General Assembly in February of 1957 resolved to convene an International Conference to:

> . . . examine the law of the sea, keeping in mind not only the legal aspects of the problem, but also its technical, biological, economic, and political aspects, and to incorporate the results of its work in one or more international conventions . . .[6]

As the conference opened in February, 1958, the representatives of 86 states, members of the United Nations and its specialized organizations, faced a diversity of national positions including a staggering range of territorial sea claims.[7]

United Kingdom	3 miles
Sweden	4 miles
Cambodia	5 miles
Spain	6 miles
Mexico	9 miles
Albania	10 miles

U.S.S.R.	12 miles
Chile	50 kilometers
El Salvador	200 miles
Federal Republic of Germany . .	In accordance with International Law

Of the five main committees of the Conference, the First Committee was charged with studying all matters relating to the territorial sea and the contiguous zone. The data compiled for the First Committee fully established that about two-thirds of the coastal states of the world had fixed their respective territorial seas a breadth of more than three miles, but in most cases not more than 12 miles.[8] This issue was early identified as a primary focal point for political division. The U.S.S.R. was attempting to gain international recognition for her long standing twelve-mile claim while the U.S. consistently sought to maintain the three-mile limit. Significant blocs of nations would become aligned with the positions of these two powers, and the Committee became hopelessly deadlocked in its attempt to delimit the territorial sea.[9] After two months they were no closer to an agreement than when they started.

A significant development at the 1958 Conference was the shift of the major supporters of the three-mile limit, the United States and the United Kingdom, to sponsor and support a territorial sea of six miles. Coupled with this shift was their agreement to an extension of certain limited exclusive fishing rights to twelve miles. The permanence of this proposal as declared by the United States, would be contingent

upon achieving international agreement at the Conference.[10] It apparently became clear as the Conference progressed, that no article making provision for a three-mile territorial sea had any possibility of adoption. The six mile proposal above attracted the greatest support, 45 votes, but still fell far short of the required two-thirds majority.[11] Thus, in the absence of any international agreement on the territorial sea breadth both the United States and the United Kingdom once again reaffirmed the claim of the three-mile territorial sea limit.[12]

Baselines. Failure of the conference to arrive at a breadth for the territorial sea tended to overshadow other successful measures concluded on the issues of the territorial sea. Many long-needed clarifications concerning this aspect of international law were adopted by the Conference and several are discussed in the subsequent paragraphs.

The problems concerning baselines were codified. The method of following the sinuosities of the coast was replaced by the arcs of circle method.

Article 6

> The outer limit of the territorial sea is a line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.[13]

This wording is the same as that proposed by the International Law Commission. This method was most advantagous to the nations with an irregular coast as it tended to straighten out the seaward boundary and could increase the expanse of territorial sea by 50% over that enclosed by a line following every sinuosity.

The convention followed the recommendations of the Commission by adopting a ruling on straight baselines:

Article 4

> In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed . . . The drawing . . . must not depart to any appreciable extent from the general direction of the coast . . .[14]

The Conference made the following qualification to the procedure of straight baselines:

Article 5

> . . . Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously has been considered as part of the territorial sea . . . a right of innocent passage . . . shall exist . . .[15]

Contiguous Zone. The next zone to seaward beyond the territorial seas has been called the contiguous zone. While the idea was not new and states had previously declared such zones for sanitation or anti-smuggling, the 1958 Conference gave effective recognition to the outward reach of coastal states through an agreement on the nature and extent of the zone. Within a width not to extend beyond twelve miles a coastal state "may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea . . ."[16] The International Law Commission had included "violations of security" as one of the categories of competence in the contiguous zone, but this was not included in the final act.

One could surmise that the delegates did not see a twelve-mile zone as sufficient to meet the security needs.

Innocent Passage. The work of the International Law Commission and the 1958 Conference produced a number of statements expressive of customary international law as related to the nature of innocent passage through territorial waters.[17] Article 1 of the Convention on the Territorial Sea and Contiguous Zone limited the sovereign rights of a coastal state in its marginal waters; one such limitation of rights pertains to innocent passage. At the 1930 Hague Convention the draft article had left some doubt whether innocent passage was a specified right; the 1958 Convention, however, made it clear that it was indeed a right enjoyed by ships of all states.[18] Articles 14 through 23 represented the agreement on the criteria of innocent passage.

Having stated the general principle of the right of innocent passage, the Convention went on to define "passage" in article 14, paragraph 2, as "navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of making for the high seas from internal waters." Additionally article 14, paragraph 4, provided that "passage is innocent so long as it is not prejudicial to the peace, good order, or security of the Coastal State." Further, paragraph 1 of article 16 provided that "the Coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent." A nation, for instance, might decide that either the destination of a ship or the nature of its cargo is such as to preclude innocence of passage.[19] The International Court of Justice

had determined in 1949 in the Corfu Channel case that innocence is not a subjective decision to be made unilaterally by the coastal state.[20] The Territorial Sea Convention assisted the coastal state in its final decision as to "innocence" through the provisions of paragraph 4 of article 16, which provided that "there shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation."

The question of permissible passage of warships in areas of territorial seas other than international straits was not readily solved.[21] Whatever the deliberations and positions among the delegates, no action was taken except with respect to article 23 under which the coastal state may exercise its jurisdiction when "any warship does not comply with the regulations of the coastal state . . ." The problem was left to what historical precedent might support and what unilateral interpretation would permit.

The U.S.S.R. and the Soviet bloc nations were careful to establish their position on the passage of warships by entering the reservation that "a coastal state has the right to establish procedures for the authorization of foreign warships through its territorial waters."[22]

Lastly on this subject, it is important to note that innocent passage in no way applies to the airspace above or the subsurface below the territorial sea.

The Geneva Conference (1960). The 1958 Conference adjourned after passing a resolution requesting the General Assembly to study the advisability of convening a second international conference to consider

the unsettled questions of the Law of the Sea. A number of representatives expressed serious doubts concerning the advisability of convening a second conference without carrying out preparatory work that would reveal that circumstances that had made it impossible to fix the breadth of the territorial sea at the first conference had changed. Nevertheless the Assembly proceeded during the thirteenth session in the fall of 1958 by calling for a new conference in the spring of 1960 to re-examine "the questions of the breadth of the territorial sea and fishery limits".[23]

There was widespread recognition that without willingness on the part of many countries to endorse a position more acceptable to the majority of nations, successful resolution of the problem in 1960 would not be possible.[24] As a result, during the interim two-year period there were many consultations among the nations in an effort to gain supporters for a compromise. The United States, for example, sent a number of representatives to countries of the world in an attempt to line up support for its "six and six" proposal.[25]

Pursuant to the convening resolution, the Second Geneva Conference met from March 17 to April 26, 1960. The Conference, attended by 87 States, established only one committee, called the "Committee of the Whole," to deal with the two related issues; the breadth of the territorial sea and fishing limits.

The initial sessions of the Conference revealed that another power struggle between the United States and the Soviet Union, similiar to the 1958 Conference, would develop. With limited agenda, the decisions

might polarize even more clearly, although regional considerations and emotional issues of other states would certainly be evident. A total of 22 to 24 nations were aligned with the Soviet bloc favoring a twelve-mile limit, about 20 nations wished control over a wide zone for fishing, and the remaining nations were relatively unaffected by the fishing problem and inclined toward a narrow belt of territorial sea.[26]

The U.S.S.R. and United States Proposals. Three principal proposals highlighted the division of interests at Geneva: (1) The Soviet Union originally proposed a straight twelve-mile territorial sea with limited qualifications, then later acceded to and supported a Mexican proposal that permitted states to opt for a territorial sea and fishing zone up to a limit of twelve miles. (2) Canada proposed a six-mile territorial sea with an additional twelve miles of sovereign fishing rights. The rights of other nations to fish the same waters would not be recognized. (3) The United States proposed a six-mile belt of territorial sea and an additional six miles in which coastal nations would have exclusive fishing rights, except that fishing also could be continued by vessels of countries whose nationals had fished the waters in the past.[27] The first proposal was defeated at the committee level while Canada and the United States joined in a combined proposal which received committee approval by a majority vote.[28]

Similar to the original United States proposal, the joint proposal provided for a territorial sea of six miles and an additional six miles for exclusive fishing rights with the main modification contained in Article 3:

> Any State whose vessels have made a practice of fishing in the outer six miles of the fishing zone . . . for . . . five years . . . may continue to do so for . . . ten years.[29]

This proposal had received wide support in the Committee of the Whole, but under the rules of procedure adopted by the Conference, substantive decisions required a two-thirds majority of the representatives present and voting.[30] An amendment to the Canadian-United States proposal, sponsored by Brazil, Cuba, and Uruguay was adopted by the Committee and appeared to provide the needed support for Conference passage. The amendment would permit a coastal state to claim "preferential fishing rights" outside the territorial sea and contiguous zone when a "special situation or condition" existed as reviewed and determined by an arbitration commission.[31]

Failure to Define Breadth of Territorial Sea. There were other ideas propounded, but the main debate centered on the Canadian-United States proposal. Indications prior to the final vote revealed individual countries or blocs of nations were fairly well decided on how they would vote and what the results would be. The Soviet Union and Saudi Arabia, for instance, were so certain the joint Canadian-United States proposal would succeed that they denounced the rules of procedure and declared, whatever the outcome of the conference, they would adhere to the twelve-mile territorial sea.[32] In a dramatic finale the joint Canadian-United States proposal received 54 votes, one short of the required number for passage.[33] The United States moved for immediate reconsideration, but this motion failed, also.[34] Last minute withdrawal of support by Japan,

Ecuador, and Chile to the compromise proposal contributed to its failure, Arthur Dean, head of the United States Delegation, remarked. Even if either Ecuador or Chile had merely abstained, the proposal would have carried. Each of three nations had changed their vote when last minute regional differences overshadowed their international foresight.[35]

At the end of the conference emotions were running high, as noted by the previous actions of the Soviet Union and Saudia Arabia, and yet the nations had come very close to codification of a new law of the sea. Following the final vote, Mr. Dean announced that since the compromise had been rejected, the United States would continue to recognize the traditional three-mile limit as the only one on which there had been anything like common agreement and which offered the greatest opportunity to all nations without exception.[36] The conference closed with no plans for another attempt. Nevertheless, there were those who urged yet another try at resolving this unforged link in the law of the sea.[37]

CHAPTER IV

BASIS OF U.S. AND U.S.S.R. POSITIONS

In the years following the two Law of the Sea Conferences, extensions of offshore jurisdiction have increased; indeed almost every principal maritime area and nation has been affected by the controversy of these broadening claims. A great number and variety of international incidents and confrontations have arisen and continue in or near the claimed territorial seas of various nations. The Soviet Union and the United States, which have been consistently opposed to each other on various questions of maritime law, may be drawn together in agreement to stabilize the critical issue of the breadth of the territorial sea.

The nuclear nonproliferation treaty,[1] the disarmament negotiations, and the strategic arms limitations talks are occurrences which hold forth promise for international resolution of many causes of conflict by these two great nations. There is reason to expect that the problem of the territorial sea can be resolved and it is appropriate to review common interests in seeking an acceptable compromise.

Strategic Interests. Of all the forces at work in developing the Soviet Union and United States positions, the strategic interests may loom the largest and most formidible, as viewed by progress already made in this area. Any discussion of the consequences flowing from a universally agreed upon breadth of territorial sea must take into account not only these immediate consequences to the coastal state but also the more far reaching effects upon international stability and the

security of the nations of the world.[2] The aspects of security which are stressed most often are maneuverability of the surface and air fleets on the high seas,[3] establishment of a possible safe haven area in neutral waters, and proximity of foreign ships to coastal areas.[4]

Military Security. The Soviet Union, long regarded as thoroughly land-oriented, has demonstrated to the world a dramatic interest in the sea, sea power, sea transport and ocean technology in recent years. Her vastly increased naval presence in the Mediterranean Sea, so much in the news since 1968, has evidenced the importance to her of warm water access to the sea. An analysis of the geographic location of nations in which the Soviets have evidenced exceptionally strong interests reveals their location near important straits or canals.[5] Examples are Egypt (Suez), Algeria (Gibraltar), Somalia and Yemen (Bab el Mandeb), Cuba (Panama), and important straits in the Indonesian archipelago (Malacca and Makassar are two).

Nature has not favored Soviet sea power except for some points on the Arctic Sea and Pacific coast; however, improvement in natural conditions has been visible in recent years. In the North Atlantic there are only two avenues of access to the open sea, through the Barents Sea and through the Baltic. Murmansk, ice free the year round on account of the Gulf Stream which passes it, has become a serviceable naval and commercial port. A system of canals connects the Baltic with the White Sea on the one hand and the Black Sea on the other. In the Arctic the developed "Northern Sea Route" opened up an entirely new way of communicating between East and West, during and since World War II.[6] In the Pacific

Ocean the acquisition of the southern part of Sakhalin Island and the entire group of the Kuriles practically made the Sea of Okhotsk another Russian sea. The use of North Korean ports has additionally assured Soviet vessels access to the Pacific Ocean.[7] These changes indicate that definite advantages can be obtained by a revision of political relations and technical progress affecting geographic conditions.

In the past, most of the sea lanes of importance to the Soviet Union have been coastal routes. These routes, coupled with those of the other European Communist nations, have provided the transportation system to facilitate combat and logistic support of the Soviet armies, connect the Soviet Union with its neighbors and offer at least a limited possibility of shifting ships among the four Soviet fleets.[8]

The Soviets have been and may continue to be extremely sensitive about their maritime frontiers. This sensitivity is illustrated by the size of the Soviet Coast Guard or Sea Frontier Force. This organization of about 80,000 men and several hundred patrol craft is administered by local Navy commanders and subject to the direction of the state security organization. It very effectively maintains the security of the Soviet Union's claimed twelve-mile territorial sea.[9]

In terms of United States interests in security, the effect of a twelve-mile width of territorial sea would seriously restrict the right of free movement of its warships and military aircraft over considerable areas of water hitherto regarded as high sea. This would be particularly serious in the many important straits which are less than 12 miles wide at their narrowest point.

Perhaps the overriding concern of the United States has been that, in time of war, a belt of 12 miles territorial sea for all states would produce vast areas of neutral and inviolable waters. Extending the territorial sea from 3 to 12 miles in breadth would lessen the area of the high seas by about 2,500,000 square miles -- an area about the size of the United States.[10] Within these waters a large force, such as the Soviet submarine fleet, could find a safe haven from the pursuit or attack of surface fleets or aircraft — just as the German U-boats did in Norwegian territorial waters in both World Wars.[11]

> An extension of the territorial sea threatens the security of the United States by reducing the efficiency of its naval and air power, and by subjecting it to increased risk of surprise attack.[12]

It was further argued by the United States delegation to the Geneva Conferences that a twelve-mile limit would impose an additional burden on neutral states in time of war, namely, the difficult problem of attempting to detect and prohibit violations in this neutral haven.[13] The violation of neutral but wide unprotected territorial waters of a small coastal state would certainly be a great temptation for any belligerent nation.

The United States, after World War II, was prompted by the Cold War, when there was great mutual distrust and fear between the two superpowers, to establish an early warning system as a defense against incoming aircraft. In December 1950, the Code of Federal Regulations was modified to provide for Air Defense Identification Zones (ADIZ).[14] These zones extend approximately 400 nautical miles into both Atlantic

and Pacific Oceans. If an unidentified aircraft penetrates the ADIZ, fighters based along the coast are directed to intercept the incoming aircraft and escort it to a landing site.

The Soviet Union has not specifically objected to the ADIZ, although during the 1958 Conference on the Law of the Sea, the U.S.S.R. was party to a joint proposal that stated:

> No naval or air ranges or other combat training areas limiting freedom of navigation may be designated on the high seas near foreign coasts or international routes.[15]

This proposal was defeated in committee.

The ADIZ is not an extension of territorial seas as such. The purpose of the regulation is to identify, locate and control all aircraft operating in this zone. Nevertheless this does represent the extension of jurisdiction for special security purposes over the airspace above a wide contiguous zone.

Prompted by the growing Soviet submarine fleet, the United States designed and installed a complex underwater array of computer monitored hydrophones. This project was designed to identify and locate enemy submarines approaching the coast.[16] Again this is not necessarily an extension of territorial rights, but is another instance of special actions taken beyond territorial waters to enhance U.S. national security.

The Soviet Union entered a head-on confrontation with the United States on the issue of territorial waters in 1960. On July 1, the Russians shot down an RB-47 reconnaissance aircraft in the Barents Sea.

The Soviet Union claimed that the aircraft was downed over Soviet territorial waters after it disobeyed an order to land. The United States countered that the aircraft had not approached within 30 miles of the Russian coast and that Soviet fighters had tried to force the RB-47 into Soviet airspace before shooting it down.[17]

It is not clear in this case whether the Soviet Union was enforcing their twelve-mile territorial sea or their claim to all Arctic waters north of the Russian coast. On April 15, 1926 the Soviets had embraced a "sector principle" laying claim to all lands and islands already discovered in this area as forming part of the territory of the U.S.S.R.[18] Theories to support government claims to the whole of the Arctic north of the Russian coast were developed following World War II. By 1966 the Soviets claim of full sovereignty to the entire Northern Sea Route was asserted in the Russian Naval International Law Manual.[19] Further notice of closing this area occurred in 1967 when the Soviets advised the United States that passage of U.S. Coast Guard icebreakers through the Vilkitsky Straits, between the Kara and Laptev Seas, would be a violation of the Soviet frontiers.[20] Speculation was that the Soviet authorities had considered the icebreakers to be warships.[21]

Soviet maritime policies with respect to her Pacific coast have been equally restrictive. The Sea of Okhotsk has been considered a closed and historic sea by many Soviet jurists although the southern area reaches the shores of the Japanese Island of Hokkaido.[22] In 1956, the Soviet Union created an artificial frontier known as the Bulganin Line running from the Kamchatka Peninsula, along the Kuriles Island

chain, and ending at Sakhalin. The Okhotsk Sea, enclosed behind this line, has no international maritime routes of significance, but prohibition of foreign warships navigating it has become more controlled.[23] A United States airliner misnavigated across the Bulganin Line on July 1, 1968 and Soviet fighters forced it to land at a Soviet air base in the Kuriles. The airliner was later released following a United States apology.[24] This incident was a further indication that the Soviets desired to control the flights of foreign planes as well as the navigation of foreign ships along "their" coast.

As one reviews the security interests related to the broadening of the territorial sea a serious threat to fleet mobility can be envisioned. Provision must be made to guarantee the freedom of mobility that the major powers have previously enjoyed, if any codification attempt to broaden the territorial waters is to be acceptable.

Intelligence Usage. Another aspect related to the strategic interests of the Soviet Union and the United States in the territorial sea breadth is the use of the sea to gather intelligence. The ocean interests of intelligence groups and military forces can and might be similiar, but are not necessarily identical. Intelligence provides more of an information service to the defense of a nation while the military unit functions as an actual security force. Assuming that all coastal nations may have something to hide off their shores, whether it is detailed bathymetric information or the details of coastal shipping, such information can be of great importance to a strong naval power. A country with a strong navy might be willing to have the narrowest of territorial

seas and the fewest restrictions on activities in the territorial sea in return for similiar concessions from other nations. An open society, such as the United States, would not necessarily keep information hidden by establishing a wide territorial sea when it is available by other means. The reverse is likely to be true in such countries as the Soviet Union where it is more difficult to collect similiar information by legitimate means.

It has been noted above, page 27, that it is in the Soviet Union's military interest to prevent ships from making close approaches to shores. One author contends that the primary reason for the claim of a twelve-mile limit is to keep ships and aircraft at a distance, thereby increasing the difficulty of a foreign "spy" ship or aircraft to make electronic, visual, or photo reconnaissance of a nation's coastline.[25] Prevention of a stronger maritime power from exerting pressure on a coastal state by gunboat diplomacy or intelligence collection could cause such a coastal nation to desire as wide a territorial sea as feasible.

Intelligence information is gathered in many ways. Science sometimes finds itself in a partnership: involved in oceanographic research on one hand and engaged in electronic intelligence on the other. The Pueblo incident off North Korea in January, 1968 is an example. While engaged in an electronic surveillance mission the captain of the vessel claimed, when captured, to be on an oceanographic research assignment.[26]

U.S. Senator R.P. Griffin introduced a resolution in 1968 which was aimed at restricting the use of foreign spy ships near the United States.[27] This attempt to produce legislation to control the close

approach to the coast by foreign ships would have provided for a variable territorial sea limit, applied to each nation according to the limit that nation claimed. The resolution was still in committee when the session of Congress ended. Nevertheless the events involved with intelligence gathering had precipitated a concern in the U.S. Congress to change the territorial sea policy.

It is not clear how much influence the U.S. intelligence community will have in the formulation of a new position. However, it appears that it will be more difficult to convince the government that a narrow territorial sea is a more important element to national security than a wider territorial sea to keep other nations away.

Long Term Interests. The areas discussed thus far do not represent the sum of the Soviet Union and United States interests in the ocean. Other long-term interests such as sea transportation, navigation, fishing and other economic concerns may bear on the development of any new positions on the territorial sea width.

Transportation and Navigation. All coastal nations depend upon ocean trade and it is unlikely that the transportation interests of any nation will differ markedly from others. Whether it be container ships, tramp freighters, or jumbo tankers, the objectives are similiar: to move goods as simply, quickly, cheaply and safely as possible.[28] What will occur in considering restrictions upon freedom of the seas, is that those nations which are heavily dependent upon ocean transportation will give this interest a higher priority than it will receive in some other countries. Air transportation can compete in the movement of perishable

goods and goods of high per pound value, but all other items normally go by sea.[29]

Ocean transportation continues to grow and for purposes of considering its effects upon the territorial sea width it is pertinent to know the location of the major maritime routes of the world.[30] The importance of this information is, of course, to determine the distance from the coast at which ships move while in transit between foreign points. It has been estimated that an extension of the territorial sea to 12 miles would result in most of the maritime highways of the world falling within territorial waters.[31]

In any law of the sea conference one can expect the transportation industry to attempt to block erosion of the present rule on innocent passage if the breadth of the territorial sea is to be extended. A wider territorial sea would extend commercial shipping routes if the right to innocent passage were suspended; in some cases routes may be closed entirely. The United States delegation, at the 1958 Conference, noted that such an extension would result in longer and costlier runs, longer lead time in receiving goods by transoceanic shipment, and considerable economic significance to those countries that depend on seaborne commerce.[32]

The foreign trade of the Soviet Union and the United States has averaged about 15% of the gross national product of both countries in recent years.[33] A major part of the Soviet foreign trade has been with Communist satellites and nations of Eastern Europe via land and air transportation. The United States, on the other hand, has relied upon

ocean transportation for approximately 70% of its foreign trade.[34] Restrictions on commercial shipping would therefore have a greater impact on the United States than on the Soviet Union.

Assuming that rights of free and innocent passage are established, the next most important thing is that the passage is safe. Larger ships and increased offshore activity suggest the need for better regulations. A nation with a wide territorial sea and heavily dependent upon ocean trade should feel more obliged to furnish better charts and navigational aids in order to permit safe and efficient transportation. At the 1958 Conference, Mr. Dean pointed out the serious difficulties to navigation with a limit of 12 miles or greater.[35] Use of visual landmarks for piloting is almost impossible and identification of land features on radar is marginal beyond a distance of 12 miles. Additionally the capability of small vessels to anchor safely in water depths at the range of 12 miles is severely limited.[36] Technological improvements during the decade of the sixties have partially offset previous navigational limitations. Highly accurate satellite navigation systems and modifications to LORAN* equipment provide the navigator with increased capabilities to effect safer transits.

Fishing. The significance of the economic wealth which nations can extract from the sea is becoming clear to coastal nations and each wants its share. The desire of nations to exploit fish and other sea resources in coastal waters has led coastal states to widen their territorial waters in order to protect their claims.[37] The controversy over fishing rights, it appears, has become more bitter and widespread

* LOng RAnge Navigation

than that concerning military security. The differing views and mutual fears since World War II surrounding the security controversy divided the states primarily into two groups. The clash of interests over the fishing areas, on the other hand, has not only involved the Communist and non-Communist camps, but has divided and strained relationships between nations who have been military allies in the Cold War.

The fishing interests speak with many voices and many views. Traditionally the concept of freedom of seas involved freedom of fishing and this meant complete "laissez faire."[38] Based on the assumption that resources were unlimited, there was little need to change this concept. Many of the less developed coastal nations, however, had not completely accepted this, for the free competition caused many economic hardships.[39] Technological advances in the harvesting of fish, catching, storing and freezing, increased the advantage of the more developed nations. Protection against this kind of competition led to the prohibition of foreign fishing vessels from coastal areas and the assertion of "exclusive" claims as put forth by the Latin-American states.[40]

The use of fish as food for the world's hungry population has been growing at about five and one-half percent per year which is greater than the rate of world population growth.[41] Available information on stocks of fish in the seas, and the opportunity for greater production through fish-farming practices in interior waters indicated that continued expansion of the catch was possible in 1966. Fishery scientists estimated that the world catch could be increased from 2 to 10 times.[42]

Although 1969 was not a particularly eventful year for the fisheries

industry, general expansion and investment occurred on a great many fronts. In the United States, which had fallen from first place as a fishing nation in 1945 to fourth place, a comprehensive report entitled "Our Nation and the Sea" laid down guidelines for new fisheries development and investment.[43] This government report was indicative of a new attitude in the United States toward fisheries development. The 1969 U.S. catch of 2.4 million tons had changed little in the past decade. Meanwhile the Soviet Union enlarged its fleet to a total of 20,000 vessels and increased its catch to 6.4 million tons, maintaining the third place among the world's fishing nations.[44] The total world fish catch did fall in 1969, however, commencing a trend which continued into 1971 and might be expected to continue for a number of years to come.

The decline of the catch, mainly confined to the more technically advanced countries, can be attributed to several factors which continue to influence the world fisheries development. The principal factor has been the reluctance on the part of established fishing nations to undertake the heavy capital investment, necessary for large modern vessels, which had its beginning in 1969.[45] This has been due to traditional fishing grounds becoming more liable to closure by unilateral action and many popular species of fish showing signs of nearing maximum exploitation.[46]

Increased protection of coastal fish stocks has prompted several nations to extend their limits to 12 miles or more, pushing out a considerable number of foreign fishing fleets.[47] Much of the fish caught by these foreign fleets has been claimed to be of little or no interest to the individual coastal nation. Thus, some see this as a device to

force the foreign nations to buy what they cannot catch.[48] Ironically many of the coastal nations making these extensions lack the fleets with the capacity to make the catches to offset such a market demand.

While the United States domestic catch has remained at almost the same level, the import of fish products has tripled, with a rise of 26% in 1971.[49] In spite of numerous stocks of marketable fish in the oceans adjoining the United States, the domestic fleet, with a few exceptions, is exploiting only coastal stocks. Most boats are making a profit and are suitable for the fisheries in which they are engaged, but the fleet as a whole is not adapted to high seas fishing and not competitive with the fleets of progressive fishing nations.[50] There are, no doubt, many reasons for this failure to maintain the pace, such as higher wages, higher insurance, lack of subsidy, etc. Some of these problems could be solved, others could be circumvented, and there is always the potential for changing the law to improve one's competitive position.[51]

In the Soviet economy fishing has become a basic industry and provides about one-fifth of the protein consumed. Additionally the Soviet Union's investments reveal a strong commitment to the growing exploitation of the ocean's fisheries. This growth has affected the economy of other fishing nations. For example, in 1961, because of Russia's increased fishing effort, exports from Iceland were reduced by half over a period of one year. This situation, coupled with a slump in Iceland's 1963 catch, has created a $10 million adverse trade balance -- a sizable problem for a small nation.[52] There is no indication that this was a discriminatory action since the Russians remain the primary

consumers of their expanded catch. In other coastal areas, countries may feel threatened as the activities of Russian trawlers and factory ships operate just outside their territorial waters. The Soviet Union can hardly be criticized for the advantage its advanced fishing technology holds over others, but any exploitation of coastal fisheries which serve as the resource base of less-developed countries might be questioned. Prior to World War II the Soviet Union had been for many years a coastal fishing nation. Thereafter the Soviet development of its ocean fishing industry has produced one of the world's largest and most modern fleets.[53]

International conflicts over fishing practices and rights are a part of world history. On the other hand conflicts have been reduced through bilateral and multilateral agreements. Nevertheless, with the increasing competition among fishermen and in view of the higher stakes involved, the opportunities for conflict among nations are likely to increase.

International competition for fish has been matched by the international effort to gain knowledge about the oceans.[54] Prompted primarily by defense, ocean science research has propelled the United States and the Soviet Union to the forefront in the field of oceanography. The fishing industry has seen significant progress with the trend toward organized fishing fleets, primarily used by the Japanese and Russians. Additionally the use of the large factory ship has aided world-wide extension of fishing efforts.[55] Science and technology are companions in the modernizing of the fishing industry. And while substantial

progress is being made, it appears that the Soviet Union has gained the lead and is likely to remain ahead in this department.

Other Economic Factors. Man's interest in the development of mineral industries in the seas is relatively new in relation to his fishing enterprises. There is little activity at present in some aspects of these industries, due primarily to technology and investment, which have limited operations to nearshore areas, but there is growing interest. Present exploration leaves little reason to doubt that substantial mineral deposits are among the resources that await development.[56] The petroleum industry appears to be the strongest and best organized of the groups with a desire for ocean development. It was the petroleum industry which was in large part responsible for the Truman Doctrine of 1945 that claimed the non-living resources of the continental shelf for the United States.[57] Most of the ocean development of the mineral industry has been since World War II.

The first modern offshore oil well was drilled in 1948. There are now in excess of 16,000 offshore wells in the United States alone and drilling is underway in at least 28 countries.[58] About 17% (6 million barrels a day) of the world's petroleum supply comes from offshore wells and it is estimated to rise to 33%, 25 million barrels, in another decade.[59]

Such a growth rate also implies, assuming other trends remain constant, that in fifteen years the world dollar value of offshore petroleum will be considerably larger than the world dollar value of fisheries. Some 15 billion dollars have been invested to date in offshore drilling, with over half off the United States coasts.[60] Current

expenditures and technological growth on a world basis have been extraordinary. There is little production, as yet, in water deeper than 200 meters, with the majority of wells in less than 100 meters of water. Technological problems increase with depth, but they do not appear to be insurmountable as evidenced by recent advancements. The pace of the seaward march will probably be determined by economics more than technology.

The total proven offshore reserves are about 52,000 million barrels of petroleum; not counting the vast reserves in the Caspian and other inland seas.[61] Offshore discoveries have revealed potential reserves in over seventy countries including the United States and the Soviet Union. The offshore discoveries will, when developed, bring in hundreds of millions of dollars, not only benefiting private and commercial investments but producing direct revenues to the Governments from rents, royalties and concessions. This development will require new regulations on the part of the nations; especially in the areas of safety and pollution. Thus, one can envision great economic growth possibilities in the petroleum industry, only one of the seabed resources, and realize early responsibilities needed in accomplishing this gain.

The Soviet Union and the United States, like many nations, are looking more and more to the great variety and multitude of mineral and organic resources within the ocean to supply their needs. The traditional and existing rules which govern the international law of the seas are becoming inadequate to regulate resource allocation and often place the fruits of enterprise in jeopardy.[62] There is no adequate security for

those who go beyond the coastal states' zones of jurisdiction, thus rendering investment in these areas unnecessarily risky and unattractive. This increased insecurity gives rise to increasing opportunity for conflict on the fishing grounds as well as the mining areas. The organization and means created for international understanding and regulation of these industries will also be harder pressed than ever before. Many small nations, attempting to reconcile these problems by extending their sovereignty onto the high seas, are adding to the problem. Continued advocacy by the Soviet Union and the United States of an open-sea policy while pursuing a course for the rational and shared use of the ocean resources would appear the most reasonable method of securing their needs and distributing this new wealth to other nations as well.

CHAPTER V

PRESENT STATUS OF POSITIONS

Urgency of the Problem. With the possible exception of pollution and conservation of fishing resources, the limits of the territorial sea constitute perhaps the most acute of all the vexing problems connected with the developed and developing nations' use of the oceans. During the last 15 years there have been many international disputes over the variety of conflicting national claims to the territorial sea. The issue which the Latin American countries have raised is not the freedom of the high seas, but the boundary of the high seas, and this is an issue which urgently needs to be settled, for reasons including not only national defense but also environmental protection and natural resource development and conservation.

It has always been recognized that any freedom is limited by the freedom of others. Even on the high seas, the freedom of a ship to navigate a straight course has always been limited by laws and customs governing right-of-way. It is past time to recognize that it must be further limited by regulations affecting the ship's disposal of wastes, the security of its cargo, its source of power, its insurance coverage, and doubtless many other aspects of its mode of operation. The very concept that the use of the seas is free to all rests, in fact, on the presumption that nothing about them is capable of being staked out, fenced off, fastened down, or otherwise secured. Unless the development of the ocean and its resources is to come about through territorial

conquest by the more powerful nations, it has got to come about through international agreement which may alter the division between territorial waters, contiguous zones, and high seas. This matter is under consideration by the United Nations, but it is moving forward at a slow pace.

Trends. Events, meanwhile, are not standing still. The 1958 Geneva Convention on the territorial sea failed to define its limits, and was followed by a 1960 conference specifically called to make up that deficiency, at which no agreement could be reached. The effect of this was to reveal that there is no specific number of miles generally recognized among nations as limiting territorial claims to the sea. During the last 12 years the numbers of nations claiming jurisdiction over belts of waters of 12 miles or greater off their coast has increased from 15 to 63.[1]

In 1960 Canada stood together with the United States in proposing agreement on a six-mile territorial limit. In 1970, without explicitly making a territorial claim, she enacted a pollution control act extending to 100 miles from her coast and asserting the right to police and impose both civil and criminal penalties in the area. At the same time Canada, which has never been called a banana republic, withdrew its acceptance of the jurisdiction of the International Court of Justice over disputes involving Canadian claims concerning the "conservation, management or exploitation of the living resources of the seas," or the "prevention or control of pollution or contamination of the marine environment."[2] The trend is clearly in a direction such that, if any future agreement is reached, it will be one which either establishes

effective international regulation of the use of the resources of the high seas, or recognizes much broader jurisdiction on the part of maritime nations than some nations, including the United States and possibly even the Soviet Union, have heretofore been willing to acknowledge.

Although progress has been slow there is hope that a declaration of agreed principles will be adopted by the United Nations General Assembly and that it will be possible to establish an international regime with balanced institutions for the control of the sea and sea-bed beyond national jurisdiction. With a need to arrive at an agreement which would have a clear and precise definition of the limits of the areas of the sea and sea-bed, the General Assembly reaffirmed on 17 December 1970 a mandate to debate the issues and convene a conference on the law of the sea in 1973.[3] A committee was established to study the "Peaceful Uses of the Sea-bed and the Ocean Floor." The committee was further divided into sub-committees by action taken following the first meetings in March 1971.[4] The main and sub-committees held sessions in March and July/August 1971 to hear a series of general statements and receive various proposals in the form of draft conventions, draft treaty articles, and working papers. Among these proposals may be a solution acceptable to the majority of nations for establishment of a regime under which exploitation of the sea and seabed resources for the benefit of mankind can go forward in an orderly, efficient and equitable manner.

Proposals for Law of the Sea Conference (1973). It is not within

the scope and has not been the purpose of this paper to review all the proposals of the Sea-Bed Committee, but observations are made of points relevant to the positions of the Soviet Union and the United States on the question of the territorial sea and the contiguous zone. These two nations have made contributions to the work of the sub-committees with the submission of draft articles to Sub-committees I and II. The provisional draft articles of a treaty on the use of the sea-bed for peaceful purposes submitted to Sub-committee I by the Soviet Union does not provide for a completed article on the question of the limits of the sea-bed.[5] Thus no new Soviet position is expected at this time. On the other hand the United States has affirmed an expansion of her position on the territorial sea with the submission to Sub-committee II of draft articles on the breadth of the territorial sea, straits, and fisheries.[6] Detailed examination and negotiation of this proposal is expected by Sub-committee II at future sessions, in order to be adequately prepared for the upcoming conference on the law of the sea.

Mr. John R. Stevenson, United States Representative to the United Nations Sea-Bed Committee, submitted the texts of the United States draft articles to the subcommittee on 3 August 1971.[7] In this presentation he explained the views of the United States Government on the draft with the hopeful expectation that each nation could sort out and make known its respective priorities during the negotiations leading to the 1973 conference. The first article presented would establish a

maximum breadth of 12 miles for the territorial sea.[8] It was noted that the United States was prepared to extend its previously held three-mile limit if adequate agreement could be reached on the international straits problem. Further difficulties could be foreseen for the interests in international navigation and overflight by this extension. The question of "innocence" would definitely have to be clarified for the United States to agree to a twelve-mile limit. In the second article specific wording provided for the right of free transit for vessels and aircraft through and over all international straits overlapped by territorial seas.[9] The United States would be willing to give up certain high seas freedoms in exchange for a "limited" but vital right-of-way to transit these international straits. The proposal would allow the coastal states to maintain control over the waters, and specific international agreements would be required concerning safety and pollution. Mr. Stevenson concluded his statement with discussion on the third article of the proposal which would establish the regulation of high seas fishing via an international or regional organization.[10]

The proposal provides indication that the United States is willing to exercise firm leadership and make concessions to bring about a territorial sea limit of 12 miles. This policy of the foremost naval and maritime power in the world coupled with appropriate actions should and must carry weight in shaping world agreement on these matters.

CHAPTER VI

SUMMARY AND CONCLUSIONS

This final chapter will attempt to summarize some of the salient points of the preceding discussions and to arrive at some conclusions as to their significance and prospects for solution.

Two Conferences were held under United Nations auspices in 1958 and 1960 hopefully to resolve the issues between the three-mile states and the twelve-mile states. Although a compromise was nearly reached on six miles, neither side could muster enough support to codify either three or twelve miles as the extent of territorial seas. During the Conferences, in an attempt to reach the six-mile compromise, the three-mile states indicated their willingness to accept a twelve-mile limit for fishing. It was not long after the 1960 Conference until all but a handful of the more than 100 states of the world had abandoned the three-mile fishing limit in favor of one extending twelve miles.[1]

The role played by the strong three-mile states has been diminishing. The United States has had strong national interests beyond the three-mile limit and consequently has limited her efforts to diplomatic means. Nearly all of those nations which still retain three-mile legislation on their law books have adopted wider limits for fishing, customs, etc. It appears to be only a matter of time until the three-mile states repeal or supersede this law and place themselves on a par with the majority.

Security needs have found new expression in the twelve-mile limit or beyond. Four hundred mile Air Defense Identification Zones provide

an example of how technology can affect legal concepts. The security zone which used to extend as far as the eye could see, now extends as far as the electronic sensors in radar ships, radar aircraft and ocean bottom hydrophone arrays can "see."

Since the early years of the Cold War, the situation between the two superpowers has changed. The Soviet Union is no longer strictly a land power. She now supports naval and merchant fleets almost the size of those of the United States; in time possibly the same size. Her fishing fleet is larger. Neither of these powers singly rules or controls the seas. Currently these two countries share control of the seas with an uneasy and changing degree of dominance. Soviet control came about as the Soviet Navy was transformed from a small coastal patrol force to the world's largest submarine force with additional operations of helo carriers. Hence the Soviet Navy, becoming more and more like the United States Navy, will have a definite interest in keeping the territorial sea belt at least as narrow as she presently claims. The reliance on passage through the straits and territorial waters of other states to reach the open oceans may be of more importance to the Soviets than to the Americans in the near future.

Many claims by states to an expanded breadth of the territorial sea are prompted by desires for exclusive rights to exploitation of the sea and sea-bed resources of the coastal and high sea waters. These expanding claims to the high seas could severely injure both American and Soviet merchant shipping, but in fisheries the Soviet Union is much more vulnerable than the United States. The extent of conflict in other

areas such as mining or oil extraction at sea is undetermined. Although the American and Soviet interests in these sea-bed resources are still developing, the apprehension about pollution and obstruction is already here.[2] As noted in Chapter IV, one could conclude that American firms are showing a greater initiative than Soviet enterprises in the oil and mineral exploitation. Those states treasuring their territorial sea and sea-bed resources must have their rights protected but unilateral extensions are only complicating prospects for an early solution to the territorial sea question.

In light of current trends and its own 1971 proposal, the United States appears willing to abandon the three-mile territorial sea position as unrealistic in the present era. Most nations of the world, including the Soviet Union, already claim a wider belt and it is most likely that a twelve-mile limit would still meet with approval of a majority of nations.

It has become clear that overall the interests of the Soviet Union in maintaining accessibility to the seas throughout the world now closely parallel those of the United States. The United States in a like manner has shown its desire to extend its territorial sea to the limit now claimed by a majority of the nations. Further evidence of the past reveals that world agreement on any law of the sea is not feasible without agreement between the two leading maritime powers. Therefore, these two states would do well to spearhead a plan to renounce all exclusive claims to the sea, the seabed, and subsoil beyond the limit of territorial waters, except the continental shelf, and support a new

international agreement which would establish a breadth of 12 miles for the territorial sea. Satisfactory tradeoffs in establishing an international regime for control of the resources of the oceans beyond the territorial waters could then be concluded simultaneously or in the very near future.

What is required is a regime that if possible, will stand the test of time or have provisions for future amendment. If an acceptable agreement can be reached on a twelve-mile territorial sea limit, the contiguous zone becomes irrelevant as the two sea areas would become congruent. There is no guarantee that an all purpose twelve-mile limit would completely serve the states. The stability of the law will be dependent upon the soundness and equitability of the agreement on an ocean resources convention.

The pronouncements and actions of the Soviet Union and the United States in any matters pertaining to the regime of the oceans are of vast importance to the rest of the nations. However, the lesser nations have the strength in numbers to oppose and defeat many international agreements unless they can be confident that their rights are protected by pertinent principles with specific objectives. The adequate protection of the rights of the moderate broader territorial sea advocates coupled with a common position of the two superpowers suggest excellent prospects for codification of the twelve-mile territorial sea limit in 1973.

NOTES

CHAPTER II

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4. L.B. Schapiro, "The Limits of Russian Territorial Waters in the Baltic," British Yearbook of International Law, v. XXVII, 1950, p. 444.

5. Jessup, p. 27-29.

6. C. John Colombos, The International Law of the Sea, 4th ed. (London: Longmans, Green, 1959), p. 87.

7. Hunter Miller, "The Hague Codification Conference," The American Journal of International Law, October 1930, p. 693.

8. Marjorie M. Whiteman, "Territorial Sea and Contiguous Zone," Digest of International Law (Washington: U.S. Govt. Print. Off., 1965), v. IV, p. 16.

9. United Nations, "Declaration of Panama," Laws and Regulations on the Regime of the High Seas, U.N. Legislative Series B/I (New York: 1951).

10. For list and description of Maritime Control Areas, see U.S. Naval War College, International Law Documents, 1948-1949 (Washington: U.S. Govt. Print. Off., 1950), v. XLVI, p. 169-176.

11. Ibid., p. 169.

12. For text of the proclamation, see Whiteman, p. 756-757.

13. For a historical development of the document, see Ibid., p. 752-756.

14. Ibid., p. 757.

15. Ibid.

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19. Alphonse E. Max, "Soviet Interest in the South Atlantic Ocean," Military Review, v. XLVIII, October 1968, p. 92-96.

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25. International Legal Materials, v. IX, no. 4, 1970, p. 543-554.

26. No other major nation has made this claim, see Ibid., p. 598-599.

27. Ibid., p. 600.

28. Ibid., p. 601-603.

29. Anthony E. Sokol, Seapower in the Nuclear Age (Washington: Public Affairs Press, 1961), p. 116.

30. For further data, see Harris B. Stewart, Jr., The Global Sea (Princeton, N.J.: Van Nostrand, 1963), p. 119.

31. Sokol, p. 107.

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2. "The Territorial Sea," British Information Services (London: Swindon, 1961), p. 3.

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4. Myres S. McDougal and William T. Burke, "The Community Interest in a Narrow Territorial Sea: Inclusive Versus Exclusive Competence over the Oceans," Cornell Law Quarterly, v. XLV, no. 2, Winter, 1960, p. 233.

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13. United Nations, Convention on the Territorial Sea and Contiguous Zone, Official Records, A/CONF 13/L.52 (New York: 1958), p. 2.

14. Ibid.

15. Ibid.

16. Ibid., p. 6.

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18. See Article 14.1 of United Nations, A/CONF 13/L.52, p. 4.

19. Such possibilities were considered feasible, see United States Congress, House Committee on Armed Services, Subcommittee for Special

Investigations, Report on Russian Trawler Traffic in U.S. Territorial Waters, 88th Congress, 1st sess., 1963 (Washington: U.S. Govt. Print. Off., 1963), p. 6-7.

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22. Franklin, "The Law of the Sea: Some Recent Developments," p. 269.

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32. Arthur H. Dean, "The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas," The American Journal of International Law, v. LIV, October 1960, p. 782.

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